

In the Matter of Nancy Watson-Tansey. Case
AD-4

February 2, 1994

ORDER VACATING

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

On March 30, 1992, the Board issued a Decision and Order in *Toyota of Berkeley*, 306 NLRB 893, in which, in addition to its unfair labor practice findings, the Board found that former NLRB Attorney Nancy Watson-Tansey had committed a technical violation of Section 102.119 of the Board's Rules and Regulations by assisting Respondent Toyota's counsel of record in the case. See 306 NLRB at 895.

Thereafter, on May 14, 1992, the Charging Party Union filed a Motion for Reconsideration of the Board's finding, alleging that additional evidence would show that Watson-Tansey had actually made an inquiry to officials in the Board's Regional Office in 1989 as to whether she could represent the Respondent in the unfair labor practice proceeding. The Union contended that this evidence established that Watson-Tansey was aware of the potential conflict when she assisted Respondent's counsel, and that her violation of Section 102.119, however technical, was willful.

Pursuant to the Union's motion for reconsideration, the Board subsequently agreed to receive further evidence in the matter and, on February 2, 1993, issued a Supplemental Notice to Show Cause requesting that Watson-Tansey show cause why, based on this evidence and/or her failure to previously disclose such evidence, the Board should not reconsider its prior finding that her violation of Section 102.119 was merely technical, and should not proceed without the taking of further evidence or a hearing to impose sanctions on her for her conduct, up to and including suspension from practice before the Agency.

Having now considered Watson-Tansey's response to the supplemental notice, however, and having reconsidered the relevant facts and argument as set forth in her response to the original notice to show cause and in the Union's statements of position on the matter, we find that the Board's previous finding that Watson-

Tansey violated Section 102.119 was in error. The undisputed evidence as presented in Watson-Tansey's testimony at the unfair labor practice hearing and in her responses to the Board's notices to show cause establishes that she at no time participated in, or had any knowledge of, the unfair labor practice case during her employment with the Agency. Nor is there any dispute that she never made a formal appearance at the unfair labor practice hearing or communicated with any Board agent about the case on behalf of the Respondent. Given these circumstances, where there is *both* an absence of actual knowledge of or participation in the case during her Agency employment *and* an absence of any subsequent actions on her part amounting to an actual appearance before, or communication with, the Agency concerning the case, we find, contrary to our earlier decision, that Watson-Tansey's assistance to the Respondent did not violate Section 102.119 either "technically" or otherwise.

Nor, in our view, does the additional evidence received regarding Watson-Tansey's failure to mention her prior inquiry to the Region warrant any discipline against her. We note in this regard that the transcript of the unfair labor practice hearing indicates that the Union's counsel actually made an offer of proof at the hearing, rejected by the administrative law judge on relevance grounds, regarding Watson-Tansey's previous inquiry to the Region and the Region's response. In these circumstances, where the inquiry and response were apparently known to all parties, and an offer of proof regarding the same actually appeared on the public record, we cannot find that her own failure to mention or discuss them in her response to the Board's original notice to show cause warrants discipline—particularly since her position, supported by the undisputed evidence, has always been that she complied with the advice given her by the Region and did not in fact "represent" the Respondent at the hearing. Accordingly,

IT IS ORDERED that the Board's finding in *Toyota of Berkeley*, 306 NLRB at 895, that Nancy Watson-Tansey violated Section 102.119 of the Board's Rules and Regulations by assisting Respondent's counsel of record in the case is vacated.